

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

**HARVEY CLIFTON THORNTON,
#K7700**

VERSUS

LARRY GREER

§
§
§
§
§
§

PETITIONER

**CIVIL ACTION NO. 1:04cv716DMR-JMR
USCA NO. 06-60026**

RESPONDENT

CERTIFICATE OF APPEALABILITY

A notice of appeal having been filed in the captioned habeas corpus case, in which the detention complained of arises out of process issued by a state court pursuant to 28 U.S.C. § 2254 or the detention arises out of a judgment and conviction in federal court which is being challenged pursuant to 28 U.S.C. § 2255, the court, considering the record in the case and the requirements of 28 U.S.C. § 2253 and Rule 22(b) of the Federal Rules of Appellate Procedure, hereby finds that:

Part A

 A certificate of appealability should issue. (See reasons below.)

 X A certificate of appealability should not issue. (See reasons below.)

The Court hereby **DENIES** herein the Motion of the Petitioner for a Certificate of Appealability [Doc. No. 19].

Part B

(for non-CJA pauper cases only)

 X The party appealing is a pauper.

 The party appealing is not a pauper. (See reasons below.)

The Court hereby **GRANTS** herein the Motion of the Petitioner to proceed *In Forma Pauperis* on Appeal [Doc. No. 23].

REASONS:

The Petitioner has failed to make a substantial showing of the denial of a constitutional right as set forth in 28 U.S.C. §2253(c)(2); the claims raised by Petitioner were time-barred pursuant to the one year statute of limitations provision of the AEDPA, *i.e.*, 28 U.S.C. §2244(d), and Petitioner cites no “rare and exceptional” circumstance to warrant equitable tolling.

Date: May 4, 2006

S/ DAN M. RUSSELL, JR.
UNITED STATES DISTRICT JUDGE